

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

MID CENTRAL OPERATING ENGINEERS)	
HEALTH AND WELFARE FUND,)	
)	
Plaintiffs,)	
v.)	CASE NO.
)	
S.T. COTTER TURBINE SERVICES, INC.)	
)	
Defendant.)	

COMPLAINT

NOW COMES the Plaintiff, Mid Central Operating Engineers Health and Welfare Fund, by its attorney, Emily R. Perez, and for its complaint against the Defendant, S.T. Cotter Turbine Services, Inc., states as follows:

1. This action arises under the laws of the United States and is brought pursuant to the Employee Retirement Income Security Act of 1974, (“ERISA”) as amended, 29 USC Section 1132 (e)(1) and (2) and 1145, and Section 301(a) of the Labor Management Relations Act (“LMRA”) of 1947 as amended, 29 USC 185 (a), and 28 USC Section 1331.

2. Venue is proper pursuant to Section 502 (e)(2) of ERISA, 29 USC 1132 (e)(2) and 28 USC 1391 (a) and (b) because Defendant performs work within this judicial district.

3. Defendant is obligated to make contributions to the Plaintiff under the terms of a certain agreement and declaration of trust establishing and outlining the administration of the Fund (Ex. 1) and pursuant to the terms of a collective bargaining agreement adopting the agreement and declaration of trust entered into by Defendant on April 22, 2010 (Ex. 2).

4. Central Pension Fund of the International Union of Operating Engineers and Participating Employers is an employee pension benefit plan under ERISA. Central Pension Fund has entered into an agreement with Mid Central Operating Engineers Health and Welfare

Fund under which Mid Central is authorized to collect all amounts due to Central Pension Fund for work within the territorial area covered by Mid Central Operating Engineers Health and Welfare Fund.

5. Defendant is obligated to make contributions to Mid Central Operating Engineers Health and Welfare Fund and Central Pension Fund of the International Union of Operating Engineers and Participant Employers under the terms of the agreements and declarations of trust establishing and outlining the administration of each Fund and pursuant to the terms of Collective Bargaining Agreement entered into by Defendant which sets forth the rate of contribution to each of the foregoing Fund and other Funds for which Mid Central Operating Engineers Health and Welfare Fund acts as the agent for collection. (Ex. 3).

6. Under the authority granted by the governing trust agreement, the Trustees have established an interest rate of 9% per annum on past due contributions.

7. As an employer obligated to make contributions to the Fund in accordance with its Collective Bargaining Agreement, Defendant is specifically required to do the following:

a. To submit to Plaintiff for each month, by the fifteenth (15th) day of the month following the month for which the report is made, a report stating the names, social security numbers and total hours worked in such month by each and every person on whose behalf contributions are required to be made by Defendant to Plaintiff, or, if no such person are employed for a given month, to submit a report so stating;

b. To remit with the report payment of contributions based upon an hourly rate as stated in the applicable collective bargaining agreement signed by Defendant;

c. To make all payroll books, records, tax and unemployment reporting forms, and other applicable records available to Plaintiff for the purpose of auditing same to

determine whether Defendant is making full payment as required under the applicable agreements;

d. To compensate Plaintiff by way of liquidated damages the amount of fifteen percent (15%) of any and all contributions which are not timely received by Plaintiff for each month in which contributions are due, as specified in paragraph 3a. above, together with interest at the rate of 9% per annum from the date said contribution was due until the date paid;

e. To pay any and all costs incurred by Plaintiff in auditing Defendant's records, should it be determined that Defendant was delinquent in the reporting or submission of all contributions required to be made to Plaintiff; and

f. To pay Plaintiff's reasonable attorney's fees and costs necessarily incurred in the prosecution of any action to require Defendant to submit records for audit or to recover delinquent contributions.

8. Defendant is delinquent and has breached its obligations to the Fund by failing or refusing to submit all of its reports to Plaintiff due, to date, and/or has failed to make payments of all contributions acknowledged by Defendant therein to be due Plaintiff;

9. Upon careful review of all records maintained by Plaintiff (Ex. 4) and after application of any and all partial payments made by Defendant, the total sum of \$3,807.83 in known amounts is due from Defendant to Plaintiff itemized as follows:

- a. \$3,256.00 in past due contributions for the period of October 2017;
- b. \$488.40 in liquidated damages on unpaid contributions; and
- c. \$63.43 in interest on unpaid contributions through January 19, 2018, at the rate of 9% per annum.

10. Further, Defendant has failed or refused to submit its monthly reports and

associated benefit contributions for the periods of November 2017 and December 2017, which are now past due.

- A. That judgment be entered in favor of Plaintiff and against Defendant in the total sum of \$3,807.83; and
- B. That an Order issue requiring Defendant to submit all outstanding monthly reports and associated benefit contributions, liquidated damages and interest; and
- C. That Plaintiff be allowed its reasonable attorney's fees and court costs necessarily incurred in this action as specified herein, or as subsequently determined, all as provided for in the Plan and in ERISA; and
- D. That Plaintiff have such other further relief as may be deemed just and equitable by the Court, all at Defendant's cost.

Respectfully Submitted,

**Mid Central Operating Engineers
Health and Welfare Fund, Plaintiff**

/s/ Emily R. Perez
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

A copy of the foregoing has been served by certified mail, return receipt requested, to the Secretary of Labor, United States Department of Labor, P.O. Box 1914, Washington, D.C. 20013; and to the Secretary of Treasury, United States Treasury, 15th and Pennsylvania Avenue, Washington, D.C. 20220, this 6th day of February, 2018.

/s/ Emily R. Perez